RE N (A CHILD)

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL J
[CRIMINAL NO: 43-7-2003]
22 APRIL 2003

CRIMINAL PROCEDURE: *Children - Remand - Power of magistrate to order remand - Whether under s. 84(2) Child Act 2001 or s. 117 Criminal Procedure Code - Period of detention*

CRIMINAL PROCEDURE: *Police investigation - Detention - Children - Power of magistrate to order remand - Whether under s. 84(2) Child Act 2001 or s. 117 Criminal Procedure Code - Period of detention*

N, a child within the meaning of the Child Act 2001 ('the Child Act'), was arrested by the police on suspicion of having committed an offence under s. 420 of the Penal Code. As investigations could not be completed within 24 hours, the police produced N before a magistrate and sought an order to remand her for seven days under s. 117 of the Criminal Procedure Code ('the CPC'). The magistrate, realising that N was a child, converted the application to one under s. 84(2) of the Child Act and ordered her to be detained thereunder. Thereafter, the magistrate entertained some doubts as to the propriety of the course of action he had taken and requested the instant court to review the said order. Hence, the sole issue before the instant court was whether the arrest and detention of a child has to be made under s. 117 of the CPC or under the Child Act.

Held:

[1] Section 83(1) of the Child Act makes it manifestly patent that the arrest and detention of a child shall only be in accordance with the Child Act. Section 117 of the CPC is, therefore, inapplicable. (p 128 a-d)

[2] Unlike s. 117 of the CPC, s. 84(2) of the Child Act does not prescribe a time period for the detentions ordered under it. The determination of the period in such a situation is governed by s. 54(2) of the Interpretation Acts 1948/1967. It follows, therefore, that the period for which a child may be detained is as is decided by the court to be absolutely necessary on the facts of the case. (p 128 a-d)

[3] Section 110 of the Child Act does not refer to, and thus does not apply in respect of, a child. (p 128 a-d)

[Action of magistrate affirmed.]

Legislation referred to:
Child Act 2001, ss. 83(1), 84(2), 110
Criminal Procedure Code, s. 117
Interpretation Act 1948 and 1967, s. 54(2)
Penal Code, s. 420

For the prosecution - Stanley Augustin DPP
Respondent in person

Reported by Gan Peng Chiang

JUDGMENT

Augustine Paul J:
N, a female, is a child within the meaning of the Child Act 2001 ("the Act"). On 11 April 2003 she was arrested by the police on suspicion of having committed an offence under s. 420 of the Penal Code. As investigations could not be completed within 24 hours the police produced N before the magistrate at Kuala Lumpur for an order to remand her for a period of seven days under s. 117 of the Criminal Procedure Code ("s. 117"). The learned magistrate, recognising that N is a child, converted the application to one under s. 84(2) of the Act and made an order for her detention as provided by the Act. The learned magistrate then entertained some doubts as to the propriety of the course of action taken and requested the High Court to revise the order made if there was an error.

At the revision proceeding before me the learned Deputy Public Prosecutor argued that the procedure adopted by the learned magistrate is wrong as the application ought to have been one under s. 117 as that is the provision of law that deals with remand applications to facilitate investigations.

The issue for deliberation is whether the arrest and detention of a child must be under s. 117 as contended by the learned Deputy Public Prosecutor or under the Act as understood by the learned magistrate. The answer, to my mind, lies in s. 83(1) of the Act which reads as follows:

> Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence but subject to subsections (3) and (4), a child who is alleged to have committed an offence shall not be arrested, detained or tried except in accordance with this Act.

This section makes it manifestly patent that the arrest and detention of a child shall be in accordance with the Act thereby rendering s. 117 inapplicable as expressly provided. Unlike s. 117 s. 84(2) of the Act which deals with the detention of a child does not prescribe any time period for detention. The determination of the period in such a situation is governed by s. 54(2) of the Interpretation Act 1967 which reads as follows:

> Where no time is prescribed within which anything shall be done that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

It follows that the length of time for which a child may be detained is for a period which is absolutely necessary as decided by the court on the facts of each case. There can be further orders of detention if deemed to be appropriate. I must add that s. 110 of the Act which provides for the arrest of "any person" for the commission of any offence against the Act to be in accordance with the Criminal Procedure Code must be interpreted as being applicable to a person who is not a child. Thus it does not affect the order made by me.

The course of action adopted by the learned magistrate is therefore correct in law.